



Comptroller General
of the United States
Washington, D.C. 20548

Van Schaik
144760

Decision

Matter of: The Montgomery Companies

File: B-242858.3

Date: August 29, 1991

Henry E. Kinser, Esq., Kincaid, Wilson, Schaeffer, Hembree, Van Inwegen & Kinser, for the protester.
Brenda J. Brunson, Department of Agriculture, for the agency.
John W. Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee proposed less space than required by solicitation for building lease is dismissed as untimely when protester had in its possession on March 14 the awardee's proposal, which indicated the space offered, yet did not protest this matter until May 16.

2. Acceptance of awardee's offer of office space meeting requirements of solicitation obligated awardee to provide space in accordance with solicitation requirements; whether awardee complies with this obligation is a matter of contract administration not reviewed by General Accounting Office.

DECISION

The Montgomery Companies protest the lease awarded to the Paragon Group, Inc. under a solicitation for offers (SFO) issued by the United States Department of Agriculture (USDA) for 37,800 to 39,800 square feet of net usable office space in Lexington, Kentucky.^{1/}

The protest is dismissed.

Montgomery argues that after the contract was awarded USDA officials discovered that Paragon had miscalculated the space

^{1/} Montgomery filed two previous protests of the award to Paragon. We denied in part and dismissed in part one of those protests, The Montgomery Companies, B-242858, June 10, 1991, 91-1 CPD ¶ 554, and we dismissed the other, The Montgomery Companies, B-242858.2, Apr. 25, 1991, 91-1 CPD ¶ 410.

it proposed and, as a result, proposed less space than required by the solicitation. Montgomery bases this allegation on affidavits submitted by its president and its maintenance manager. These individuals explain that they were told by the regional director of USDA's Agricultural Marketing Service that Paragon failed to consider in its calculation of the proposed space certain corridors, entrances and exterior hallways required to be included by the solicitation and, as a result, its proposed space did not meet the minimum solicitation requirement. Montgomery argues that the agency does not understand what the SFO required to be deducted from gross space to determine net usable space and that the agency has not explained how Paragon's proposed space was evaluated.

To the extent that Montgomery argues that Paragon's offer proposed less space than required by the SFO, this contention is untimely. In this respect, under our Bid Protest Regulations, protests not based on improprieties in a solicitation must be filed not later than 10 working days after the protester knew or should have known the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1991).

In one of our earlier decisions, The Montgomery Companies, B-242858, June 10, 1991, 91-1 CPD ¶ 554, we dismissed as untimely Montgomery's contention that the lease with Paragon was for greater square footage than required by the SFO since that allegation, although based on documents received by March 14 at the latest, was not raised until April 19. Montgomery has not requested reconsideration of that decision or otherwise disputed our conclusion that on March 14, it had in its possession documents, including Paragon's proposal, which indicated the net square footage proposed by Paragon. Under the circumstances, we do not see how the current protest, which was filed on May 16, and which alleges that the space proposed by Paragon was too small, can be timely when the earlier allegation that the space was too large was untimely when filed on April 19. The fact that someone alleges after award that the space delivered is too small does not, under these circumstances, reopen the issue of whether the offer submitted was compliant. In any event, Paragon's offer proposed 37,940 square feet of net usable space, which met the requirement of the SFO.

To the extent that Montgomery argues that the actual space in the awardee's building, which is the subject of the awarded lease, does not consist of 37,800 to 39,800 net square feet as the solicitation required, this is an issue that we do not review. The acceptance of Paragon's offer obligated the firm to provide office space in its building in accordance with the SFO requirements. Whether the offeror in fact complies with this obligation is a matter of contract administration which

we do not review. 56 Fed. Reg. 3,759 (1991) (to be codified
at 4 C.F.R. § 21.3(m)(1)); Trados GmbH--Second Recon.,
B-237919.3, Jan. 12, 1990, 90-1 CPD ¶ 53.

We dismiss the protest.

A handwritten signature in cursive script, appearing to read "John Brosnan", with a long horizontal flourish extending to the right.

John Brosnan
Assistant General Counsel